

## The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHNNY B. DELASHAW, JR.,

Plaintiff,

V.

SEATTLE TIMES COMPANY, and  
CHARLES COBBS,

#### Defendants.

CASE NO. 2:18-cv-00537-JLR

**DEFENDANT SEATTLE TIMES CO.'S  
PROVISIONAL MOTION TO SEAL**

**NOTE ON MOTION CALENDAR:  
July 8, 2020**

## I. INTRODUCTION

Concurrent with this motion, Defendant Seattle Times Company (“The Seattle Times”) is filing a Second Motion for Summary Judgment. The Second Motion for Summary Judgment cites to and relies on numerous documents and deposition excerpts that Defendant Dr. Johnny Delashaw, Co-Defendant Charles Cobbs, non-party Swedish Health Services (“Swedish”), and non-party Dr. Rod Oskouian have designated as “Confidential” under the terms of the Stipulated Protective Order entered on September 17, 2018 (ECF 46).

The Stipulated Protective Order requires The Seattle Times to provisionally file under seal, pending the Court’s ruling on this motion, an unredacted version of its Second Motion for Summary Judgment as well as all cited documents and deposition excerpts designated as Confidential (the “Provisionally Sealed Documents”). With the exception of the sealed version of the Second Motion for Summary Judgment, each of the Provisionally Sealed Documents is being

**DEFENDANT SEATTLE TIMES CO.'S PROVISIONAL  
MOTION TO SEAL - 1  
CASE NO. 2:18-cv-00537-JLR**

**SUMMIT LAW GROUP PLLC**  
315 FIFTH AVENUE SOUTH, SUITE 1000  
SEATTLE, WASHINGTON 98104-2682  
Telephone: (206) 676-7000  
Fax: (206) 676-7001

1 submitted as an exhibit to the July 8, 2020 Declaration of Jessica Goldman in Support of The  
2 Seattle Times' Second Motion for Summary Judgment (the "Goldman Declaration") and the  
3 Declaration of Rachelle Daugherty and four exhibits appended to that declaration.

4 As detailed below, it is the designating party's responsibility to provide a basis for  
5 maintaining under seal each of the Provisionally Sealed Documents.

## 6 **II. CERTIFICATION**

7 As set forth in the accompanying Declaration of Jessica Goldman, counsel for The Seattle  
8 Times certifies that the requirements of LCR 5(g)(3)(A) and the terms of the Stipulated Protective  
9 Order requiring a good faith effort to meet and confer prior to filing this motion have been met.

## 10 **III. THE STIPULATED PROTECTIVE ORDER**

11 The Court entered the Stipulated Protective Order on September 17, 2018 (ECF 46).  
12 Section 4.3 addresses the filing of confidential material under seal, expressly referencing the local  
13 civil rules: "Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
14 standards that will be applied when a party seeks permission from the Court to file material under  
15 seal."

## 16 **IV. ARGUMENT**

17 Local Civil Rule 5(g) governs the process for filing documents under seal, including those  
18 that have been designated by a party (or non-party) as confidential pursuant to the terms of a  
19 protective order:

20 There is a strong presumption of public access to the court's files. This rule  
21 applies in all instances where a party seeks to overcome the policy and the  
22 presumption by filing a document under seal.

23 (1) A party must explore all alternatives to filing a document under seal.

24 (A) If the party seeks to file the document under seal because another party  
25 has designated it as confidential during discovery, the filing party and the  
26 designating party must meet and confer to determine whether the designating  
party will withdraw the confidential designation or will agree to redact the  
document so that sealing is unnecessary.

1                             (B) Parties must protect sensitive information by redacting sensitive  
 2                             information (including, but not limited to, the mandatory redactions  
 3                             of LCR 5.2) that the court does not need to consider. A party who  
 4                             cannot avoid filing a document under seal must comply with the  
 5                             remainder of this rule.

6                             Under LCR 5(g)(3)(A), the moving party is required to include a certification that it has  
 7                             met and conferred with the other parties to determine the need for sealing the documents at issue.  
 8                             As detailed in the accompanying Declaration of Jessica Goldman, the parties have exchanged  
 9                             detailed correspondence and/or spoken by telephone regarding whether it is proper for any of these  
 10                            documents to be filed under seal.

11                            Consistent with LCR 5(g)(4), since the parties first met and conferred on this issue last  
 12                            Spring, The Seattle Times has reduced the number of confidential documents on which it relies in  
 13                            its Second Motion for Summary Judgment, thereby “minimiz[ing] the number of documents it  
 14                            files under seal[.]” The Seattle Times also has attempted to limit the amount of material to be  
 15                            sealed including, by way of example, submitting only those pages of deposition transcripts  
 16                            actually cited in its Second Motion for Summary Judgment, rather than submitting voluminous  
 17                            transcripts under seal. For their part, the designating parties also have withdrawn their  
 18                            confidentiality designations as to various documents and deposition excerpts as a result of the  
 19                            required meet and confer process.

20                            The Seattle Times believes that all of the documents cited in support of its dispositive  
 21                            motion should be filed in open court. The moving party is not required to establish a substantive  
 22                            basis for sealing documents that have been designated as confidential by another party. Rather, **it**  
 23                            **is the *designating party's obligation*** “in its response to the motion to seal” to provide “a specific  
 24                            statement of the applicable legal standard and the reasons for keeping a document under seal, with  
 25                            evidentiary support from declarations where necessary.” LCR 5(g)(3)(B).

26                            Accordingly, in response to this motion, The Seattle Times anticipates that the parties who  
 27                            designated the Provisionally Sealed Documents as Confidential will explain to the Court why they  
 28

1 believe the documents should remain under seal and The Seattle Times requests that, upon  
2 consideration, all documents filed in support of its dispositive motion be filed in open court.

3 DATED this 8<sup>th</sup> day of July, 2020.

4 Respectfully submitted,

5 SUMMIT LAW GROUP PLLC  
6 Attorneys for Defendant Seattle Times Company

7 By s/Jessica L. Goldman

8 Jessica L. Goldman, WSBA #21856  
9 Christopher T. Wion, WSBA #33207  
Tanya C. Nesbitt, WSBA #56122  
SUMMIT LAW GROUP PLLC  
315 Fifth Avenue South, Suite 1000  
Seattle, WA 98104  
Telephone: (206) 676-7000  
Email: [jessicag@summitlaw.com](mailto:jessicag@summitlaw.com)  
[chrisw@summitlaw.com](mailto:chrisw@summitlaw.com)  
[tanyan@summitlaw.com](mailto:tanyan@summitlaw.com)